

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TINA CABISCA

Plaintiff

V

ATTORNEY AFFIRMATION
IN RESPONSE TO DOCKETS
60 and 61
14-cv-6485-EAW-JWF

CITY OF ROCHESTER, NEW YORK,
DARYL HOGG, JASON PRINZI, NOLAN WENGERT
CARRIE BERKSTRESSER and K TURNER

Defendants

STATE OF NEW YORK
COUNTY OF GENESEE ss:

E. ROBERT FUSSELL, the attorney for the plaintiff under penalty of perjury,
hereby affirms upon personal knowledge, and/or upon information and belief, the
following:

1. I am the attorney for the Plaintiff in this matter. I make this affirmation in response to the Court's Decision and Order Document 60, and the Declaration of Mr. Ash, Document 61.

2. I apologize for not doing the research required of me when making my Motion to substitute the proper party for the deceased Defendant Nolan Wengert, and for burdening the Court with doing my work for me. I am very thankful to the Court for making the efforts I should have done myself. Frankly, I'm embarrassed.

3. I want to redo the substitution of Defendant Motion and do it correctly.

4. I disagree with Mr. Ash's contention that obtaining the names and addresses of the executors and beneficiaries of Nolan Wengert's estate is difficult. My computer skills are minimal, but, when preparing my Motion to Substitute, I found, without much effort, the file number of Mr. Wengert's estate and, using that information went to the Monroe County Surrogate Clerk's office and discovered that the executors and beneficiaries of Mr. Wengert's estate are his parents Maryrose M. Wengert and Earl G. Wengert who live at 2425 Main Street Clayville, New York 13322, and that the attorney for the estate is Richard A. Leszyk Esq. whose address is 322 Ridge Road, Ontario New York, and phone number is 585 872 6790. I did file a claim on behalf of the Plaintiff with the Monroe County Surrogate, and served a copy of that claim upon Mr. Leszyk. (In my Motion papers I included a

copy of the Surrogate Court's Order naming Nolan Wengert's parents as executors of his estate, Docket 56-3.)

WHEREFORE plaintiff requests that the Court allow the parties to proceed properly and legally to substitute the proper parties for the name of Nolan Wengert as a Defendant in this action, and for such other and further relief as the court deems just and proper.

CERTIFICATION TO THE COURT

E. Robert Fussell affirms to this court under penalty of perjury as follows:

That your deponent is an officer of the court, has reviewed the foregoing affirmation and affirms that his affirmations are true.

Dated: June 19, 2018

____s/_____

E. ROBERT FUSSELL

